

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 21086 of 2001(I)

PETITIONER:

**K.HANEEFA,
SELMA QUARTERS,
P.O. THUKKUMMURI,
TIRUR, MALAPPURAM DISTRICT.**

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS:

- 1. INDUSTRIAL TRIBUNAL, PALAKKAD.**
- 2. I.P.KUNHIMOHAMMED, GENERAL MERCHANT,
PROPRIETOR, I.P. STORE, MARKET ROAD,
TIRUR, MALAPPURAM DISTRICT.**

**BY SR. GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN
BY ADV. SRI. K. RAMACHANDRAN
SMT.P.K.BEENA**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 12/03/2007 ALONG WITH O.P.NO.27468 OF 2001,
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

O.P.NO.21086/2001 I

APPENDIX

PETITIONER'S EXHIBIT:

**EXT.P1: COPY OF THE AWARD PASSED BY THE 1ST RESPONDENT
ON 19/09/2000.**

/TRUE COPY/

KSS

S.SIRI JAGAN .J

O.P Nos. 21086 & 27468 of 2001

Dated this the 12th day of March 2007

JUDGMENT

The petitioners in these to Original petitions are the Management and workman respectively in I.D.49/1999 before the Industrial Tribunal Palakkad. Both of them are challenging the award of the Tribunal in the I.D which is produced as Ext.P4 in O.P No. 27468/2001 filed by Management and as Ext.P1 in O.P. No. 21086/2001. filed by the workman. The issue referred for adjudication was

“ Whether the denial of employment to Sri.K.Haneefa, Salesman, I.P.Store, Tirur is justifiable or not? If not, to what relief he is entitled to ”

2. The contention of the workman before the Tribunal was that he had worked in the Management establishment since 4-2-1987 till 26-5-1996 when he was denied employment without assigning any reasons. The contention of the Management was that on many occasions the workman used to remain absent without leave or prior intimation and after 31-3-2996 he did not turn up for work at all . Therefore notice were issued to him to report for work in spite of which the workman remained absent. The Management also contended that the workman was employed by the

Management only from 1990 onwards. Their contention was that after 31-3-1996 the workman had abandoned work and therefore he is not entitled to any relief in the I.D . The Tribunal on the evidence before it came to the conclusion that the Management had denied employment to the Workman. But instead of directing reinstatement with back wages, believing the evidence tendered by the Management that the workman is employed in some other establishment, directed the Management to pay compensation amounting to Rs.15,000/- to the workman in lieu of reinstatement with backwages. This award is under challenge both at the instance of the Management and the workman.

3. The Management would contend that the finding of the Tribunal that the Management denied employment to the workman is perverse and therefore liable to be set aside.

4. The workman on the otherhand in his original petition would contend that the finding that the workman is presently employed elsewhere is wrong and that even if the finding is correct the compensation fixed is too low.

5. I have considered the rival contentions in detail. In this case the challenge before me is against the findings of fact arrived at by the

Industrial Tribunal on the basis of evidence before it. In such cases the jurisdiction of this Court under Article 226 of the constitution of India is very limited only to the extent of examining whether the findings of fact entered by the Tribunal are perverse. Therefore I shall proceed to consider whether the findings of fact arrived at by the Tribunal are in anyway perverse.

6. As against the contention of the Management that the workman ceased to come for work after 31-3-1996, the workman claimed that he was working till 26-5-1996. The Tribunal believed the version of the Management and found that he worked only till 31-3-1996. The Tribunal also found in favour of the Management regarding the two documents produced by the Management which are Exts P1 and P2 along with O.P No.27468/2001. Although the workman disputed having received it, on the basis of the 'certificate of posting' produced by the Management, the Tribunal drew an inference that the workman would have received it. In Ext.P1 the Management had directed the workman to report for duty within 3 days and stated that if he does not report so, it would be presumed that he has abandoned his employment . In Ext. P2. the Management intimated the workman to come and receive his terminal benefits. Although the Tribunal believed the case of the Management that the workman had received the

said communications, he went on to consider whether those are sufficient to come to the conclusion that the workman had in fact abandoned employment. The Tribunal noted that the workman had approached the conciliation officer within a reasonable time and had also filed appeal under the Kerala Shops and Commercial Establishments Act. It was dismissed for default. The Tribunal took into account the circumstance that if the Management was willing to provide employment as stated in Ext.P1 Notice, the matter would have been settled before the conciliation officer or before the Appellate authority under the Kerala Shops and Commercial Establishments Act. On the other hand, when the management was examined before the Tribunal as MW1 he categorically stated that he has not prepared to give employment to the workman as he had lost confidence in it. This stand of the Management was taken as a ground to hold that the Management has actually denied employment to the workman and the workman had not abandoned employment as claimed by the Management. I could not find anything perverse in this appreciation of evidence by the Tribunal. The fact that another person would have come to a different conclusion on the same set of evidence is no ground for me to interfere with the said award, which is settled law as laid down by the various decisions of the Supreme Court. In the circumstances I am unable to come

to the conclusion that the finding of fact arrived at by the Tribunal are in any way perverse.

6. Now the next question is as to whether the Tribunal was justified in ordering compensation in lieu of reinstatement and whether the computation of compensation is reasonable. From the evidence of the Management the Tribunal came to the conclusion that the workman was employed in some other concern. At the same time the Management contended that the Management had lost confidence in the workman and therefore he would not be in a position to carry on the business if he is directed to reinstate the workman in service. It is under the said circumstances that the Tribunal came to the conclusion that in the interest of either side it is better to avoid reinstatement and direct payment of compensation in lieu of reinstatement.

7. The Tribunal as a matter of fact found that the Workman joined service on 1-9-1990 and he was denied employment on 2-5- 1996 He was aged 27 years at the time of joining service. Therefore the workmen would have been 33 years at the time of his denial of employment. On the basis of the wage slip and wage register produced and proved by the Management

the Tribunal accepted the last drawn of wages of the workman as Rs.1561/-. On the basis of these inputs the Tribunal came to the conclusion that an amount of Rs. 15,000/- would be a reasonable compensation in lieu of reinstatement and backwages. Since the Tribunal had found that the workman was infact employed in some other establishment and has taken into account the factors relevant for computation of the compensation payable, I am unable to come to the conclusion that such fixation is in any way arbitrary or unreasonable.

8. For all the above reasons I do not find any merit in the challenge against the award in these two writ petitions and accordingly both the writ petitions are dismissed.

S.SIRI JAGAN .JUDGE

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